

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District	CV 07-0413- AS
Name (under which you were convicted): Frank E. Gable		Docket or Case No.: 90C120442
Place of Confinement: Oregon State Prison / Nevada State Prison		Prisoner No.: 94488
Petitioner (include the name under which you were convicted) Frank E. Gable		Respondent (authorized person having custody of petitioner) v. Max Williams
The Attorney General of the State of Hardy Myers		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Circuit Court of the State of Oregon, Marion County, Salem Oregon.  
(b) Criminal docket or case number (if you know): ~~95C12041~~ 90C20442
- (a) Date of the judgment of conviction (if you know): July 16, 1991  
(b) Date of sentencing: Aug. 1991
- Length of sentence: life w/par without parole
- In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
- Identify all crimes of which you were convicted and sentenced in this case: Aggravated murder
- (a) What was your plea? (Check one)
 

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

 (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Oregon Court of Appeals

(b) Docket or case number (if you know): \_\_\_\_\_

(c) Result: affirmed

(d) Date of result (if you know): April 20, 1994

(e) Citation to the case (if you know): ?

(f) Grounds raised: denied effective assistance of counsel, judges failure to fairly rule

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: Circuit Court of the state of Oregon, Marion County

(2) Docket or case number (if you know): 95C12041

(3) Result: affirmed

(4) Date of result (if you know): 2000

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: denied effective assistance of counsel, failure to meet with defendant, failure to ~~state~~ plan an effective defense strategy, failure to give alibi notice, effectively cross-examine witnesses.

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If yes, answer the following:

(1) Docket or case number (if you know): ?

(2) Result: affirmed

(3) Date of result (if you know): unknown to me

(4) Citation to the case (if you know): unknown

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Oregon Supreme Court

(2) Docket or case number (if you know): unknown 95C-12041 A113425

(3) Date of filing (if you know): unknown? June 28, 2005

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: ineffective assistance of counsel

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result: part affirmed, sentence vacated and remanded

(8) Date of result (if you know): ~~December 2006~~ unknown

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?      Yes ☐    No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?      Yes ☐    No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition:      Yes ☐    No ☐

(2) Second petition:    Yes ☐    No ☐

(3) Third petition:      Yes ☐    No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

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12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Denied effective assistance of counsel, counsel failed to:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

① meet with defendant and keep him advised ② meet with defendant before trial to plan effective defense strategy ③ Give an alibi notice ④ Read reports and discovery furnished by State of Oregon ⑤ Read the defense reports consult with them on an ongoing basis and effectively inform use the information investigators provided ⑥ adequately investigate Tim Natividad's and John Crouse's involvement in murder. 7. Object to an grounds of Ex Post Facto the court submitting life without parole.

(b) If you did not exhaust your state remedies on Ground One, explain why: \_\_\_\_\_

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post conviction relief

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Circuit Court state of Oregon Marion County.

Docket or case number (if you know): 95C12041

Date of the court's decision: 2000

Result (attach a copy of the court's opinion or order, if available): affirmed

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☒

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Oregon Court of Appeals

Docket or case number (if you know): ? 95C12041-1113425

Date of the court's decision: unknown

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

info ineffective of counsel

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: \_\_\_\_\_

GROUND TWO: Defendant was denied right to testify

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defense counsel failed to allow petitioner to testify in his own behalf in guilt phases portion of the trial knowing that he was unwilling to waive his right to testify in his own behalf.

(b) If you did not exhaust your state remedies on Ground Two, explain why: \_\_\_\_\_

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Oregon Appeals court

Name and location of the court where the motion or petition was filed: Salem Oregon Court of Appeals

Docket or case number (if you know): unknown

Date of the court's decision: unknown

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Oregon Supreme Court

Docket or case number (if you know): unknown 2605?

Date of the court's decision: unknown 2605?

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

ineffective assistance of counsel

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: \_\_\_\_\_

GROUND THREE: Denied his right to due process, right to be heard by himself. Judge West failed to:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(1) Give the defendant an opportunity to be heard on letter dated April 2<sup>nd</sup> 1991 in which he request a hearing on his attorneys failures to consult with him and prepare for trial. (2) give defendant opportunity to be heard on letter dated July 1, 1991. (3) Post pone the trial or grant appropriate relief when all defense investigators presented a letter Bob Abel and John Starkel delivered to court attorney not prepared.

(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_



## (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: post conviction

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Circuit Court state of Oregon Marion County

Docket or case number (if you know): 95C12041

Date of the court's decision: 2000

Result (attach a copy of the court's opinion or order, if available): affirmed

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☒

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Oregon Appeals court

Docket or case number (if you know): unknown

Date of the court's decision: 2005

Result (attach a copy of the court's opinion or order, if available): affirm in part/  
sentence remanded

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

ineffective assistance of counsel

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: \_\_\_\_\_

GROUND FOUR: Indictment on which defendant was charged was invalid for following reasons:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- ① The foreman of grand jury Thomas Denney OJB No. 66034 was career prosecutor employed by dept. of justice, which was involved in the investigation of the Francke homicide and should of been excused.
- ② Oregon state police officer William Pierce was permitted to sit in on the grand jury proceedings violating ORS 10.050(2)

(b) If you did not exhaust your state remedies on Ground Four, explain why: \_\_\_\_\_

not ineffective assistance of counsel

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: post conviction appeal

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Oregon State Circuit Court state of Oregon Marion County

Docket or case number (if you know): 95C12091

Date of the court's decision: 2000

Result (attach a copy of the court's opinion or order, if available): not available

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Oregon Appeals Court

Docket or case number (if you know): unknown

Date of the court's decision: 2005

Result (attach a copy of the court's opinion or order, if available):

affirmed in part/sentence hearing ordered

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

ineffective assistance of counsel.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☒

If your answer is "No," state which grounds have not been so presented and give your

reason(s) for not presenting them: Sentencing issue Ex post facto

ineffective assistance of counsel failed to file appeal notice in a timely manner.

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

### Fifth Claim of Relief

Petitioner Gable alleges that he was denied effective assistance of appellate counsel, counsel failed to:

1. Properly and adequately argue all issues raised by trial counsel, In particular, the trial court failed to allow petitioners attorney to present evidence that Timothy Natividad and John Course were involved in the murder of Michael Francke.

2. Properly raise on appeal that the indictment was in violation of ORS.10.650(2) because Foreman Thomas Denney was a career prosecutor employed by dept. of Justice for state of Oregon and because unauthorized persons were allowed to sit in during grand jury testimony.

### six claim of relief

Petitioner Gable alleges that he was denied due process for the following reasons.

1. The prosecutors Bestwick and Moore failed to disclose exculpatory evidence and failed to disclose plea agreements or promises.

Petitioner Gable requests that this court reverse his conviction vacate his sentence and release him from custody.

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. \_\_\_\_\_

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15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Robert Abel and John Starkel  
address unknown to me!

(b) At arraignment and plea: Robert Abel and John Starkel

(c) At trial: Robert Abel and John Starkel

(d) At sentencing: Robert Abel and John Starkel

(e) On appeal: not sure of his name

(f) In any post-conviction proceeding: Ken Hadley Baker City Oregon

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_  
David Celuch Portland

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17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☒ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: Feb Federal Court house Portland Oregon

(b) Give the date the other sentence was imposed: Sept. 1991?

(c) Give the length of the other sentence: 10yrs. CS

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: vacate conviction  
and sentence and release petitioner/order new jury trial

or any other relief to which petitioner may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on  
March 16, 2007 (month, date, year).

Executed (signed) on March 16, 2007 (date).

John E. Gable  
Signature of Petitioner

\_\_\_\_\_  
\*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Frank E. Gable

Petitioner

vs.

Case No: \_\_\_\_\_

Max Williams

Oregon dept. Corrections

Defendant

1.

Comes now the above named petitioner pro-se and respectfully files this motion seeking appointment of court appointed counsel.

2.

Petitioner is indigent and unable to afford or attain counsel on his own. wherefore, Petitioner prays this court for an order appointing counsel.

Dated March 16, 2007

Respectfully submitted,

Frank E. Gable

Frank E. Gable



Certificate of Service

I, petitioner Frank E. Gable certify the foregoing information is true and correct.

Respectfully Submitted,

Frank E. Gable  
Frank E. Gable

Dated March 16, 2007